

into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(c) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of weatherization, and prior liens.

(d) Filing an estimated loss claim. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim with the liquidation plan if the lender expects liquidation to exceed 90 calendar days. The estimated loss payment will be based on the outstanding loan amount minus the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the loss claim will be promptly processed in accordance with applicable Agency regulations, as set forth in this section. The loss claim calculation will include 90 calendar days of interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. If the lender estimates that there will be no loss after considering the costs of liquidation, the lender submits an estimated loss claim of zero. Interest accrual will cease 90 calendar days after the date the liquidation plan is approved by the Agency.

(e) Property disposition. Once the liquidation plan has Agency approval, the lender must make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants in 7 CFR part 1944, subpart L or successor regulation.

(f) Accounting and reports. When the lender conducts liquidation, the lender will account for funds during the period of liquidation and provide the Agency with reports at least quarterly on the progress of liquidation, includ-

ing disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(g) Transmitting payments and proceeds to the Agency. When the Agency is the Holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or elsewhere.

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§ 3565.455 Alternative disposition methods.

The Agency, in its sole discretion, may choose to obtain an assignment of the loan from the lender or conveyance of title obtained by the lender through foreclosure or a deed-in-lieu of foreclosure.

(a) *Assignment.* In the case of an assignment of the loan, the assignment of the security instruments or the security must be in written and recordable form. Completion of the assignment will occur once the following transactions are completed to the Agency's satisfaction.

(1) Conveyance to the Agency of all the lender's rights and interests arising under the loan.

(2) Assignment to the Agency of all claims against the borrower or others arising out of the loan transactions, including:

(i) All collateral agreements affecting financing, construction, use or operation of the property; and

(ii) All insurance or surety bonds, or other guarantees, and all claims under them.

(3) Certification that the collateral has been evaluated for the presence of contamination from the release of hazardous substances, petroleum products or other environmental hazards which may adversely impact the market value of the property and the results of that evaluation.

(b) *Conveyance of title.* In the case of a conveyance of title to the property, the lender must inform the Agency in advance of how it plans to acquire title and a timetable for doing so. The Agency will accept the conveyance upon receipt of an assignment to the Agency

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of all claims of the lender against the property and assignment of the lender's rights to any operating funds and any reserves or escrows established for the maintenance of the property or the payment of property taxes and insurance.

§ 3565.456 Filing a claim.

Once the lender has disposed of the property or the Agency has agreed to accept an assignment of the loan or conveyance of title to the property, the lender may file a claim for the guaranteed portion of allowable losses. All claim amounts must be calculated in accordance with this subpart and be approved by the Agency.

§ 3565.457 Determination of claim amount.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed.

(a) *Report of loss form.* An Agency approved form will be used for calculations of all estimated and final loss determinations. Estimated loss payments will only be paid by the Agency after it has approved a liquidation plan.

(b) *Estimated loss.* An estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment paid by the Agency will be applied by the lender on the loan debt. Such application does not release the borrower from liability.

(2) The Government's written authorization is required for all protective advances in excess of \$5,000. Protective advances include, but are not limited to, advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance. A protective advance claim will be paid only at the time of the final report of loss payment except

in certain transfer and assumption situations with Agency approval.

(c) *Final loss.* Within 30 calendar days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees (as provided for in this section) is completed, a final report of loss on a form approved by the Agency must be prepared and submitted by the lender to the Agency. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on the report of loss form.

(1) A determination must be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended